

REMARKS

In the above-mentioned, Final Office Action, all of the pending claims, claims 1, 5-15, and 18-24, were rejected. Claims 1, 5-14, and 21-24 were rejected under Section 103(a) over the combination of Eglen and Ballou. Additionally, claims 1, 5-15, and 18-24 were rejected under Section 101 for being directed to non-statutory subject matter.

Responsive to the rejections of the claims, the independent claims, claims 1 and 15, have been amended in manners believed both to recite statutory subject matter and to distinguish the invention over the cited combination of references used to reject the claims.

With respect to exemplary claim 1, the recitation of the initial price indicia associator is amended, now further to state that the initial price indicia is caused to be dependent upon the sales history of the other content files authored by each respective content creator. Claim 15 is analogously amended.

The Applicants assert, particularly as now-amended, that neither of the cited references discloses the structure and method recited in claims 1 and 15.

The Examiner acknowledged that Eglen fails to disclose a categorized value comprising identifying a category group into which a respective content creator is categorized dependent upon prior sales histories of other content files authored by the respective content creators nor of the initial price indicia being based on the categorized value. But, the Examiner relied upon Ballou for disclosing such recitation. The Examiner specifically relied upon paragraphs [0049] and [0056] of Ballou.

Paragraph [0049] of Ballou refers to prices in effect for movies stored on a disk. The paragraph states that movies maybe different prices depending upon which pricing category for which the movie is coded. Paragraph [0056] also refers to pricing categories for the movies.

Neither of these sections, nor others, of Ballou refer to a category group that is dependent upon a sales history of other content of a content creator. And, other portions of Ballou disclose pricing based solely on time.

Paragraph [0023], for instance, states that the value of a movie is higher during its first week after release than when the movie is several years old through use of a date code. Paragraph [0057] and [0058] also disclose per-play pricing and movie categories. However disclosure is limited to “old one-star” movies and exception pricing based upon a viewer viewing the same movie multiple times.

None of the disclosed categories in Ballou pertain to, or are suggestive of, a category group into which a content creator is categorized depending upon a sales history of other content of the content creator nor of initially pricing content based upon the content creator being categorized into a content group defined in this manner.

In short, the Examiner already acknowledged that Eglen fails to disclose this feature, and, for reasons just-given, Ballou also fails to disclose this feature. No combination of these references can be made to form the invention, as now-recited. Therefore, independent claims 1 and 15, and the dependent claims dependent thereon, are believed to be patentably distinguishable over the combination of Eglen and Ballou.

Additional amendment is believed to overcome the section 101 rejection thereof. With respect to claim 1, computer readable program code embodied at a non-transitory computer readable storage medium creating a content creator database is now recited. The Applicants assert that this amended recitation conforms to the requirement set forth in MPEP Section 2106, and recites statutory subject matter.

Analogously, claim 15 is amended now to recite a computer program product comprising a non-transitory computer readable storage medium having computer readable program code embodied at the storage medium for associated historical indicia, initially pricing the content files, and adjusting the initial price indicia. The Applicants further assert that the amended

recitations of claim 15 recite statutory subject matter in conformity with Section 101. Amendments to claims dependent upon claim 15 are made responsive to the amendments made to their parent claim 15 and similarly are also believed to recite statutory subject matter.

In light of the foregoing, independent claims 1 and 15, and the dependent claims dependent thereon are believed to be patentably distinguishable over the cited combination of references and also to recite statutory subject matter. Accordingly, reexamination and reconsideration for allowance of the claims is respectfully requested. Such early action is earnestly solicited.

Respectfully submitted,

/ Robert H. Kelly /

Robert H. Kelly
Reg. No. 33,922

KELLY & KRAUSE, L.P.
6600 LBJ Freeway, Suite 275
Dallas, Texas 75240
Telephone: (214) 446-6684
Fax: (214) 446-6692